(Testimony of Frank Gartenberg.)

of the Los Angeles branch—I would like to explain a little bit if I may——

Mr. Faulkner: Your Honor, I merely asked him if he remembered giving a direction to send that message to San Francisco.

The Court: Q. You have no recollection of it?

A. I have no recollection, but if I did it was at the wishes of the San Francisco office for me to say that.

The Court: Let the question and answer stand. Proceed.

Mr. Faulkner: Q. Did you receive on the 4th of November any instructions to recandle the eggs in Los Angeles?

A. I don't remember getting any instructions from San Francisco. All the instructions for the recandling of those eggs [1944] were issued by the State Department. We could not touch those eggs unless they were there, the Food and Drug and the State Department inspectors were present at all times while the eggs were in our possession, and we couldn't do anything until they allowed us to do it.

Q. Did you direct anyone in the employ of Nye & Nissen in Los Angeles in connection with those eggs to send a message to San Francisco that Mr. Wirth would do all he could to help in the situation involved in the William Clark?

A. I may have.

Q. Did you in the month of November 1943 re-receive an answer from San Francisco, which was

(Testimony of Frank Gartenberg.)

presented to you and shown to you, in which San Francisco advised you that it could not—when I say "San Francisco" I mean the San Francisco plant of Nye & Nissen—that it could not fight with the American President Lines, who were very good customers, and to recandle the eggs and to salvage as many eggs as possible?

A. That was their general excuse on everything.

Q. I didn't ask you that. I asked you if you got a message——

A. I don't remember.

Q. ——a message to that effect on or about November 4 that was shown to you as a paper would be shown by one man to another who was sitting at a teletype machine?

A. I don't remember.

Q. Did you after receiving messages of the type I have last mentioned get an instruction from San Francisco on the teletype or otherwise to return the good eggs to San Francisco? [1945]

A. Probably had a message to that effect, because we shipped the eggs to San Francisco after they were reconditioned.

Q. Mr. Gartenberg, you have advised us that you probably got a message to return the eggs to San Francisco and that you did get instructions of some kind to recandle them in Los Angeles. In what form did you get that advice?

A. I can't remember.

Q. I call your attention to this exhibit, 137, and I will ask you if you are familiar with it?

(Testimony of Frank Gartenberg.)

A. Yes.

Q. I will ask you if you dictated this to Mrs. Weinstein?

A. I either dictated it or wrote it out in longhand and she typed it.

Q. Have you got the longhand paper that you gave her?

A. I said I don't remember whether I wrote it in longhand and handed it to her for typing, or dictated it to her while she typed it, because she could not take shorthand and most of the times I had to dictate to her as she typed the letters.

Q. Did you observe Mrs. Weinstein actually type this paper? A. Yes sir.

Q. 137? A. Yes sir.

Q. Now, the type of paper,—the original would be on white paper, would it not?

A. That is right.

Q. And there would be a carbon between the white and the yellow?

A. That is right.

Q. You observed Mrs. Weinstein type this document 137, is that right?

A. What do you mean 137? [1946]

Q. That is the number that the Clerk has given it. It is U.S. Exhibit 137. A. Oh, I see.

The Court: That is just put on there to identify the document.

Mr. Faulkner: Q. That is not a number—you observed her typewrite document U.S. Exhibit 137?

A. That is right.

(Testimony of Frank Gartenberg.)

Q. You did not sign the original, did you?

A. No sir.

Q. When was this occurrence of Mrs. Weinstein sitting at a typewriter and typing this memorandum? What day? A. On November 3.

Q. What time of the day?

A. Possibly in the afternoon. I don't remember.

Q. What is your best recollection?

A. I can't say. I was in and out of the office, and it may have been in the morning, afternoon, or the last thing before going home.

Q. When the letter was completed on the typewriter there was then a white message like this and a yellow one when it was all through, is that correct? A. That is right.

Q. Where did you see the original message last? When was the last time you saw the white message? A. When she wrote it.

Q. At the typewriter?

A. That is right.

Q. Is that the last time you saw it?

A. That is right.

Q. You do not know what happened to it after that of your own knowledge, do you?

A. I know it went into the overnight envellope. [1947]

Q. How do you know that?

A. Because I know—I saw her put it in there.

Q. Then the last time you saw it was not when it was at the typewriter, was it?

(Testimony of Frank Gartenberg.)

A. Well, when you get through at the typewriter, you pull it out and you put it in the envelope.

Q. It was all done right then and there in your presence? A. That is right.

Q. Correct? A. Correct.

Q. At that time you were practising typewriting, weren't you?

A. I don't think so. I can't type.

Q. You had reached that conclusion before that and you were spending a lot of your time practising on a typewriter, weren't you? A. No sir.

Q. You were not?

A. I might have been trying to finger, but I can't type—never typed.

Q. But you were practising in the firm of Nye & Nissen how to use a typewriter, weren't you?

A. I might have, yes. I might have tried to.

Q. When was the last time, Mr. Gartenberg, that you were in the premises of Nye & Nissen in Los Angeles?

A. The week just before I quit the Nye & Nissen firm, the week ending November 13. It must have been on a Friday, either a Thursday or Friday, the week ending November 13, 1943. That was in that office.

Q. That was the last time?

A. That was the last time.

Q. Isn't it a fact that you were in that office in November, [1948] 1945?

A. In November 1945?

(Testimony of Frank Gartenberg.)

Q. Yes, last November, three months ago?

A. That I was in that office?

Q. Yes sir? A. No sir.

Q. You were not. Isn't it a fact that you were in that office frequently in the year 1944 after you had terminated any relation with it?

A. No sir, never.

Q. Never? A. Never.

Q. So that from the time you left the employ of Nye & Nissen in the approximate month of November 1943 you have never gone back to that office since?

A. I had no reason to go there and no desire to go there.

Q. When Mrs. Weinstein took the white paper and put it, according to your testimony, in an overnight envelope, what happened to the yellow paper, the carbon copy?

A. What happened to the yellow carbon copy?

Q. Yes. In other words, she made an office memorandum; the white went into an envelope and there was a carbon copy for the files, was there not?

A. That is right.

Q. What happened to the carbon copy?

A. That is the carbon copy right there.

Q. That is what your testimony is, but what happened to it on the 3rd of November?

A. What happened to it?

Q. Yes? A. I put it in my desk.

Q. In your desk?

A. That is rgiht. [1949]

(Testimony of Frank Gartenberg.)

Q. It was not put in the files of the company?

A. I kept all my correspondence in my own desk.

Q. And then what happened to it after that?

A. It remained there until I left the employment of Nye & Nissen.

Q And then what happened to it?

A I took it with me.

Q. You took it with you?

A. That is right.

Q. And then what happened to it?

A. What do you mean, then what happened to it?

Q. What did you do with this particular paper, U. S. Exhibit 137?

A. I had it in my possession.

Q. Up to what time?

A. Oh, I don't recall. Until some time later when the FBI came questioning me regarding the William S. Clark, regarding the eggs and butter.

Q. When was that?

A. I don't remember just when it was.

Q. Was it in the summer of 1944?

A. It may have been.

Q. Was it prior to the summer of 1944?

A. I don't remember when it was.

Q. Was it in the year 1945?

A. No sir, it wasn't in 1945.

Q. Did you at that time deliver this document to a member of the FBI? A. Did I?

Q. Yes. A. Yes sir.

Q. Who was the member of the FBI that you delivered it to? What was his name?

(Testimony of Frank Gartenberg.)

A. I don't remember his name, but he was an agent from Los Angeles. They questioned me——

Q. Not Mr. Johnson or Mr. Magee?

A. No sir. [1950]

Q. It was a man other than those two?

A. That is right.

Q. Now, do you remember in respect to even the season of the year whether it was the spring of 1944 or the fall of 1945?

A. I don't remember.

Q. Did you at all events after any inquiry, after any discussion with any member of the FBI office, go back to the office of Nye & Nissen in Los Angeles? A. No sir.

Q. Did you on the first occasion that you were interviewed by the man from the FBI, did you on the first occasion you talked to him give him this document, U. S. Exhibit No. 137?

A. No sir, I did not, not after he questioned me and asked me if I had any copies of a report which was made on the William S. Clark; so I told him the truth, that I had a copy of it.

Q. I understand that you took the copy of this report that was in your desk dated November 3, 1943. Now, have you a copy of any document that you sent to San Francisco and signed dated November 5, 1943?

A. A copy of a letter, November 5?

Q. Yes, dated November 5, 1943?

A. I don't remember. I might have.

Q. In other words, I understood your testimony

(Testimony of Frank Gartenberg.)

a moment ago that all of the communications which you sent to San Francisco went into your desk, and that when you left you took them?

A. That is right.

Q. Would you examine your papers, Mr. Gartenberg, or, rather, do you know whether you have as you sit there now as a witness [1951] a copy of a letter that you sent to San Francisco relating to the eggs on the William Clark on November 5, 1943? A. I might have. I don't remember.

Q. Where would they be?

A. Where would the copies be?

Q. Yes.

A. I have got them wrapped up in my garage put away.

Q. I mean, are they here in San Francisco?

A. No sir. I have got all the correspondence pertaining—between myself and Nye & Nissen, but I don't have them with me.

Q. What period of time elapsed between the time that a man in the FBI asked you to give him a copy of any documents relating to the William Clark and the time that you gave it to him? Was it one hour, one day or one week?

A. I don't remember. I told him at the time that I would have to search my file and see if I had a copy, and then when he came back I handed it to him.

Q. You then gave this document, U. S. Exhibit 137, to that agent, is that correct?

A. That is right.

(Testimony of Frank Gartenberg.)

Q. And then you later saw it here in court?

A. That is right.

Q. And from time to time when you have been examined by these men preparing to come in here, isn't that correct? A. That is right.

Q. You have testified, Mr. Gartenberg, that the particular eggs that were involved in the William Clark, that part of them, came from a shipment that went to the Terminal Refrigerating Company in early February—that is, about twenty-five cases came from that shipment and became part of the lot of eggs known as 3737; that is right, isn't it?

A. That is right.

Q. And that that lot of 105 cases was made up of 80 cases of medium eggs that came from the National Ice and Cold Storage Company, is that right?

A. It was 80 cases out of one car and 25 out of another.

Q. The eggs were not in cold storage at the National Ice and Cold Storage Company, were they? A. No sir, they came out of a car.

Q. In other words, isn't this correct, Mr. Gartenberg, that a car—for instance, a consignment of eggs from the middle west would go to Los Angeles and be unloaded on the floor, or what is called in the business the dock of the National Ice and Cold Storage Company, and would remain there and might be sold from the dock and then later some disposition would be made of them, is that not correct?

(Testimony of Frank Gartenberg.)

A. Not necessarily every car. Cars that were consigned to a cold storage company that were to be stored would be unloaded by their employees and put right into the cold rooms. But if there are any eggs that came in there which they had no disposition or we had no sales for them, or we wished to hold them for a higher market, we would hold these eggs in the car as long as the railroad company allowed us to keep them there—generally three days after that we would either unload them and put them on the dock or we would store them. [1953]

Q. These particular eggs that the 80 cases came out of, those were eggs that were on the dock as distinguished from being in cold storage, isn't that right?

A. They were unloaded, separated when they unloaded the car, butter and eggs—they were separated and left on the dock waiting for my disposition.

Q. And your disposition of the eggs that were on the dock of the National Ice and Cold Storage Company was to put them in cold storage in the Terminal Refrigerating Company, isn't that right?

A. Well, I ordered a truck line to pick them up there. The disposition was only to pick up the eggs from the National and deliver them to the Terminal, and then my orders to the Terminal were to store them in Lot 3737.

Q. Lot 3737 was made up?

A. Had already been started with the 25 cases.

(Testimony of Frank Gartenberg.)

Q. Didn't they all go into storage at the same time?

A. They might have been the same day, or part one day and part the next day. I don't remember that.

Q. How many cases of eggs were in the carload that the 80 cases came out of?

A. I don't remember exactly. It was a mixed car and there couldn't have been more than about—I think there was a couple of hundred cubes of butter in there. I think there were about three hundred or more of eggs—maybe less.

Q. When those eggs were unloaded in Los Angeles did you candle those eggs that went onto the dock of the National Ice and Cold [1954] Storage Company? A. I inspected them, yes sir.

Q. You say inspected. I say did you candle them? A. Well, it is the same term.

Q. Then you use the word "inspected" interchangeably with "candling"?

A. That is right.

Q. The fact is in the trade when you refer to an inspection of eggs in a shipment, would be to open the eggs and pick up a lot of the eggs, but not to candle them, isn't that right?

A. That is right. He just inspected them, see what—check the quality.

Q. Did you inspect the quality by an actual candling process? A. That is right.

Q. A hundred eggs to the case?

A. Not necessarily a hundred. Maybe more. I

(Testimony of Frank Gaytenberg.)

don't remember. But I took pretty good samples of all cars.

Q. What percentage of the shipment involved did you inspect or candle?

A. I don't remember just in that particular car, but I used to check them pretty good.

Q. What were the types of eggs in that car, do you remember?

A. There were large eggs, white eggs, and there were large brown eggs, and medium.

Q. Did you reach a conclusion as to their quality? A. Right.

Q. And did you report your conclusion as to the shipment and the quality to San Francisco?

A. Well, it wasn't a common practice of reporting, or making a written report, but in our [1955] conversations over the phone or on the teletype, if I was asked about the quality of those eggs, why, I would report to them.

Q. Did you give any indication by telephone, by teletype, by printed report or in writing in any shape, manner or form on the quality of eggs involved in Lot 3737 at any time before that lot was put in storage in the Terminal Refrigerating plant to anybody in San Francisco?

A. I might have. I don't remember.

Q. You don't remember. You might have. All right. After you examined the contents of certain boxes that were on the two railroad cars, out of which ultimately this Lot 3737 was produced, you saw those eggs in the plant of the Terminal Ice

(Testimony of Frank Gaffenberg.)

and Refrigerating Company between February and October; am I correct in that?

A. Yes, I believe I looked at them once.

Q. Now, you did not see the cases of eggs nor the eggs actually transported from the icehouse in a truck and delivered to San Francisco, did you?

A. I didn't follow the truck.

Q. You were not at the ice company when the truck was loaded, were you?

A. I didn't have to be.

Q. I didn't ask you that. You were not in the refrigerator room on the day—— A. No, sir.

Q. ——the truck was loaded? A. No sir.

Q. Now then, some time after an instruction was given to the ice company by Dora Weinstein to make a delivery to a trucking [1956] company. You saw certain boxes that bore a number 3737; that is right, isn't it?

A. When the eggs were——

Q. No, you saw certain boxes that bore the number 3737, egg boxes, after the transaction where a request was made of the ice company, the refrigerating company, to send the eggs to San Francisco.

A. I wasn't there when they were withdrawn from storage.

Q. No, but later, after that event, at a subsequent time, you saw certain boxes on the William Clark that bore a number 3737, is that right?

A. That is right.

Q. The boxes that you saw at that time had fuzz on them, did they not? A. Some had.

(Testimony of Frank Gartenberg.)

Q. Apart from the eggs themselves you examined the mapes and the fillers, did you not?

A. That is right.

Q. And they were wet, weren't they?

A. They weren't wet, but they had the dampness of storage. They weren't wet.

Q. Well, they were damp?

A. When the fillers and flats are in storage for that length of time they absorb the moisture and you can tell the difference between a fresh filler and a filler that has been in storage, the same as eggs.

Q. Mr. Gartenberg, I just want an answer to a simple question.

A. You want me to say they are wet. I can't say they are wet.

Q. You can't? You had no trouble saying they were wet yesterday.

A. They were damp. It is dampness that you can——

Q. I will ask you this, Mr. Gartenberg——

A. It isn't in the same term——

Mr. Faulkner: Your Honor, I object to the witness volunteering. There is nothing before the witness.

The Witness: You want me to explain.

Mr. Faulkner: Q. You stated yesterday that the material——

Mr. Pratt: What page?

Mr. Faulkner: 1892.

"A. First by the condition of the cases, the

(Testimony of Frank Gartenberg.)

marks, the lot numbers, the material that the eggs were packed in. If eggs have been recandled it is generally to the advantage of the eggs to put them in dry good material. This material was the original because they were soft, wet from storage."

Q. Now, yesterday the material was wet, wasn't it?

A. I would like to explain the term that we use. We don't mean wet——

Mr. Faulkner: I will withdraw the question, your Honor.

Q. Did you testify in this court yesterday that the material in which these eggs were when you saw them on the William Clark was wet? Yes or no?

A. If you want that answer, all right. Yes, they were wet.

Q. There isn't any question, Mr. Gartenberg, that the material in which these eggs were at the time you observed them on the William Clark was either wet or damp or showed indications of having been wet or damp, isn't that right? [1958]

A. Will you repeat that question?

(Question read.)

A. It showed that these fillers and flats have been in storage with the eggs.

Q. You keep talking about storage. I am asking you if they were wet or damp.

A. I said the fillers and flats had the appearance—they had the dampness of the absorption of the dampness of storage. They were not wet in

(Testimony of Frank Gartenberg.)

the term of being wet like water, but they had the dampness of the storage.

Q. Now, it is a fact, is it not, Mr. Gartenberg, that egg fillers, if kept at a temperature of 32 degress, and that temperature is maintained constantly, that those eggs will remain dry, isn't that right?

A. Not necessarily. It all depends on what material is used. There are different kinds of material.

Q. Isn't it a fact that in the matter of refrigeration that if you preserve a temperature of 32 degress in an ice and cold storage plant the fillers in which the eggs are contained still remain dry?

A. No sir.

Q. Do they become damp? Is it your testimony that the fillers in which eggs are contained in cold storage will become damp if they are placed in a cold storage plant that maintains an average temperature of 32 degrees steady and constant for a long period of time?

A. If the material is of white pulp, the flats and the fillers are made of white paper, which is the better grade, they will remain dryer than the straw board fillers and flats that are being used in the midwest—Minnesota, Wisconsin, Illinois, and all through there. Those fillers become damp much faster because they haven't got the body.

The Court: We will take a recess.

(Recess.) [1959-a]

Mr. Faulkner: Q. Mr. Gartenberg, I under-

(Testimony of Frank Gartenberg.)

stood you to testify in your direct examination that you have been handling eggs since you were eleven years old. A. Yes.

Q. How long would that mean that you have been handling eggs? A. About 40 years.

Q. You have handled them in refrigeration, have you not? A. Yes.

Q. Is there any question at all, Mr. Gartenberg, that the thing that causes dampness in fillers, regardless of the quality of the fillers, is the dampness that comes from the atmosphere?

A. Yes.

Q. In an ice and cold storage plant that dampness is created by changes of temperature, isn't it?

A. Right.

Q. So that if you had eggs in cold storage at 32 degrees, just as constant as revolutions of a clock, you would not have any dampness in the atmosphere, would you?

A. Well, I am not an expert on refrigeration, but they don't have to be exactly 32.

Q. No, I know that, but I am assuming 32.

A. If it is kept on a balanced temperature the eggs, or any other merchandise is kept in good condition.

Q. And the material in which it is wrapped would be kept in good condition, would it not?

A. That's right, until it is taken out of storage and gets into the warm air.

Q. In other words, if you have kept a particular article, [1960] like eggs, in cases, and they had been

(Testimony of Frank Gartenberg.)

in storage over a long period of time when they had absorbed the temperature of the storage room and where they are removed to another atmosphere, if the atmosphere was at a higher level of temperature there would be moisture; isn't that right?

A. Yes.

Q. Now, how long does it take, approximately, eggs to absorb or be the temperature in the storage room?

A. How long what?

Q. Let me put it this way: Assume you were taking eggs, and that this was a storage room where the jury sits, and you put ten cases of eggs in there and the temperature of that room is 32 degress; how long would it take those eggs to have the same temperature as the room in which they were?

A. Well, it would take quite a while, but until you take them out of the cold room——

Q. I want to get that first?

A. Well, you want to ask me questions——

Mr. Pratt: I would like the answer completed.

Mr. Faulkner: I did not mean to interrupt the witness.

The Court: Very well.

Mr. Faulkner: I think he knows something about it. What I would like you to do—I will withdraw the question.

Mr. Pratt: May the previous answer be completed?

Mr. Faulkner: I will withdraw the question.

(Testimony of Frank Gartenberg.)

Mr. Pratt: I still would like to have the answer completed.

The Court: Read the question and the answer as far as it [1961] was given, Mr. Reporter.

(The record was read.)

The Witness: When you take them out of the cold room it isn't ten minutes that they start sweating, the eggs start sweating, and the material absorbs the moisture from the air, the material gets soggy. That is how you are able to tell whether the eggs, whether the material was in storage or not.

Mr. Faulkner: I just want to ask—I want to repeat the question.

The Witness: I would like to give you a complete answer.

Mr. Faulkner: I know, but you don't answer it. I asked you a question, how long does it take the eggs, when they are put in the cold storage room, to reach the level of temperature in that room?

A. It would take quite a while.

Q. Four hours, or one hour, or four days?

A. It will probably take, depending on the temperature of the room—if you take them outside it will take them a lot faster to get to the temperature of the outside, but if you are putting them in another room where there is no air coming in there, no heat comes in there, it will take several days before they get to the same temperature.

Q. Assume you were taking eggs and putting them into a room, a cold storage room in a well-run refrigerating plant; how long would you say it

(Testimony of Frank Gartenberg.)

would take them to have the same level [1962] of temperature as the room in which they are placed?

A. Well, I know it will take quite a while.

Q. Four or five days, isn't that right?

A. Depending on the room.

Q. Well, you have seen eggs in a refrigerating plant, haven't you? A. Sure.

Q. You have stored thousands of cases of eggs a month when you were working for Nye & Nissen, thousands of cases of eggs a month?

A. Surely.

Q. Weren't you concerned with the condition of temperature at which the storage room was kept?

A. No, I was not concerned, that was the storage company's business.

Q. Well, at all events, when you say it will take quite a while, do you mean that would be four or five days?

A. Oh, I did not understand it, the way you were putting the question. Do you mean when the eggs are put into a cold room, or when they are taken out of a cold room into a warm room?

Q. I mean exactly what I say. You take some eggs from the outside and put them into the room, in a cold storage room?

A. Well, I understood it the other way. You take eggs, warm eggs, and put them into a cold storage room with the temperature, the way they keep it there, 32 or 33, it don't take very long for those eggs to chill.

(Testimony of Frank Gartenberg.)

Q. That's right. They would chill within 24 hours?

A. Well, around about that, 24 to 48 hours.

Q. And if they were taken, for instance, if the temperature of the eggs when they went into that room was close to the temperature of the room, then it would be even a faster process of chilling; isn't that right? A. If they were taken——

Q. I mean the colder the eggs are when they go into the refrigerating plant, the quicker they would reach the temperature of that room?

A. Right.

Q. Therefore, when eggs go into a cold storage plant, a well-run plant, they take the temperature of the room within 24 hours and the plant is maintained at a proper temperature, the fillers will not become damp or wet as long as that cold storage room is maintained at a proper temperature; isn't that right?

A. If the cold storage room is dry, the humidity is what it should be and the fillers and flats are made of No. 1 paper, the material will last a lot longer and they won't get as wet.

Q. Yes. A. As strawboard paper.

Q. But there is no moisture for either a good filler or a bad one to absorb unless it is in the air; isn't that right?

A. There is a moisture regardless of the material they are in, a certain amount of moisture that they absorb.

Q. On the occasion that you examined the eggs

(Testimony of Frank Gartenberg.)

that were on the William Clark, it was very apparent to you that there was fuzz on the cases and that the fillers had been wet; isn't that right?

A. The eggs on the William Clark, as I saw them [1964] when I was down there——

Q. I haven't asked about eggs. I have asked about fillers.

Q. The fillers and the cases had the appearance exactly of storage eggs, storage fillers and flats have when they come out of storage after being in there that length of time.

Q. That's right, and that condition that you saw was a condition that was induced by dampness, wasn't it? A. That's right.

Q. So what you saw and observed on those cases was a condition that is caused by dampness in a cold storage plant, according to your testimony?

A. Well, no; that condition is caused when you take eggs out of storage, out of a cold room and you transport them a distance from Los Angeles to San Francisco, in an unrefrigerated facility, and you keep them here and then put them back into a cold room again, and those fillers and those cases will absorb it quicker than other eggs if you don't take them out into the warm room. That was caused, not by the storage, but it was caused by being put in the open warm air and after being in storage from February until October, 1943.

Q. Mr. Gartenberg, it took the warm air to hit these fillers to cause this condition?

A. It certainly did.

(Testimony of Frank Gartenberg.)

Q. Where did the egg cases and the fillers get the warm air, in the storage plant, or outside?

A. After they left the storage, they were transported——

Q. When did they leave the storage?

A. When? [1965]

Q. Yes.

A. When they were withdrawn you have got the date there.

Q. You mean these particular eggs?

A. I believe October 14th.

Q. The 15th.

A. Either the 14th or 15th, I can't state exactly.

Q. Well, around the 14th or 15th, isn't that correct? A. Around that time.

Q. Do you know when they went on the William Clark? A. No, I don't.

Q. Do you know how long they remained on the William Clark?

A. No, I don't. I didn't know anything until I was called to go to the William Clark.

Q. Do you know the condition of refrigeration on the William Clark other than the day that you went in there?

A. No, I don't. The condition at that time was 38.

Q. 38. Did you observe the temperature on the thermometer? A. Yes.

Q. That is how you know it was 38?

A. Yes.

(Testimony of Frank Gartenberg.)

Q. How long were you in the chill room on that day?

A. I was there for about long enough to take the eggs out and go down again and look at the cases. I was there about a half or three-quarters of an hour.

Q. The ship was at a dock at that time?

A. Yes, that is right.

Mr. Faulkner: I think that is all. Oh, there is a [1966] matter.

Q. What else was in the chill box with the eggs?

A. If I recall correctly, I remember seeing boxes of vegetables stacked and I have seen meat there, but I don't remember whether that was in a separate room, or not; but I remember seeing meat and hams there.

Q. No refrigerating plant packs eggs with vegetables, does it, fresh vegetables?

A. Well, it is not practicable, but it doesn't hurt anything.

Q. What was the humidity in that chill room?

A. I don't know.

Q. You expressed an opinion on your direct examination that the humidity was all right. Did you express that opinion upon that subject when you did not know what it was?

A. I can still say it was all right, but you are asking me how it was.

Q. Yes; how was it? A. It was O.K.

Q. What was the temperature?

A. The temperature was 38.

(Testimony of Frank Gartenberg.)

Q. What was the reading in respect to humidity?

A. I don't believe they had a humidity reading. I just looked at the thermometer; it was 38.

Q. How do you determine humidity?

A. By noticing the condition of the room, the cold, or if there was air in it.

Mr. Faulkner: That is all.

Q. Well, did you receive a subpena to come into court? A. Yes.

Q. Have you got it in your pocket?

A. Yes.

Q. May I see it, please? A. Here. [1967]

Mr. Faulkner: I offer this in evidence, your Honor.

Mr. Pratt: Let me see it. I have no objection to it.

(The subpena was marked Defendants' Exhibit AM in evidence.)

The Court: Is that all from this witness?

Mr. Faulkner: That is all. I would like to read the subpena.

Mr. Pratt: That is all.

Mr. Faulkner: Or a part of it.

"You are hereby commanded to appear in the District Court of the United States for the Northern District of California at the court room, Room 307, in the City of San Francisco, in said district, on the 4th day of February, A.D. 1946, at 10 o'clock a.m. of said day, and also that you bring with you and produce at the time and place aforesaid the following: Duplicate original of memorandum dated

(Testimony of Frank Gartenberg.)

November 3, 1946, written by you, to Abe Moncharsh, relating to eggs and butter you inspected aboard the SS Clark, then and there to testify on behalf of the United States and not depart the court without leave thereof or by the United States Attorney."

Redirect Examination

Mr. Pratt: Q. Mr. Gartenberg, referring to this report of yours to Abe Moncharsh dated November 3rd, you said that you gave that to an FBI man who interviewed you sometime ago.

A. That's right. [1968]

Q. He took it along with him, did he?

A. Yes, sir.

Q. Did he bring it back to your office?

A. It was mailed to me months later.

Q. It was mailed back to you?

A. It was mailed back to me.

Q. So when you came to San Francisco in response to this subpena did you bring that paper back with you? A. Yes.

Q. You testified that after these eggs left storage at the Terminal Refrigerating Company and were being transported to San Francisco upon an unrefrigerated truck, they would then become warmer in temperature and then accumulate from the condensation of moisture from the top and sweat and form a filament of moisture? A. Yes.

Q. These eggs were transported, I believe, about the 14th of October, 1943, about that date, from

(Testimony of Frank Gartenberg.)

the Terminal Refrigerating Company in Los Angeles to San Francisco? A. Yes.

Q. On the 15th, perhaps it was, of October, and it was about the 2nd of November that you saw these eggs on the Clark? A. That's right.

Q. You testified in connection with the condition of these eggs that you found a condition of black rot in some of them. Will you state whether the conditions that you have described, namely, the transporting from Los Angeles to San Francisco in an unrefrigerated truck, I will ask whether that condition during the period from the 15th of October to the 2nd or 3rd of November could develop the condition you found in the eggs [1969] on the latter date?

Mr. Faulkner: We object to that as not proper redirect examination.

Mr. Pratt: He brought that out in cross-examination, if the Court please.

The Court: He may answer.

Mr. Faulkner: Exception.

A. No, sir, the eggs would not spoil in that short a time.

Mr. Pratt: Q. How long would it take for the black rot to develop that you described?

A. The black rots that were in that case would take months to develop. They were as black as the ace of spades, and those eggs don't get rotten in that short a time.

Mr. Pratt: That is all.

Mr. Faulkner: Q. Have you got the letter that

(Testimony of Frank Gartenberg.)

you received from the FBI sending back your note of November 3rd in your pocket?

A. I don't think so. I may have it at home.

Mr. Faulkner: Have you a copy of it, Mr. Pratt?

Mr. Pratt: No, I have not.

The Court: Call your next wtiness.

DONALD HENSHAW COOPER,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your full name?

A. Donald Henshaw Cooper. [1970]

Direct Examination

Mr. Honck: Q. Mr. Cooper, who is your present employer?

A. Matson Navigation Company.

Q. What position do you have with that company?

A. Store loading supervisor.

Q. What are the duties of that position?

A. I have charge of laying out, the loading of ships, hiring the men to do the work, and supervising the actual loading. I also have charge of the receiving clerks at the times when they work alongside the ships.

Q. Was that your position and were those your duties in December, 1944?

A. That is correct.

(Testimony of Donald Henshaw Cooper.)

Q. I show you Government's Exhibit 79 in evidence, which is a receiving ticket, covering a shipment of certain products to the Hawaiian Shipper. You will notice the signature on the lower right-hand corner. Do you know whose handwriting that is in?

A. Yes, that is Gordon Fry.

Q. And who is Mr. Fry?

A. He is a receiving clerk at the Matson.

Q. An employee of the Matson Company?

A. That is correct.

Q. Do you recall loading stores on board the Hawaiian Shipper early in December, 1944?

A. Yes; I do.

Q. Did you supervise that loading of stores?

A. Yes.

Q. How many men did you have working under you at that time?

A. A receiving clerk and approximately 17 stevedores. [1971]

Q. Do you have the company time records reflecting the time spent in loading that ship at Pier 32? A. Yes.

Q. Will you produce them, please?

I ask that a green sheet of paper identified as Matson, Pier 32, SS Hawaiian Shipper, Voyage 13, be marked for identification.

The Court: It may be marked for identification.

(The document was marked U. S. Exhibit 138 For Identification.)

Mr. Houck: Q. I show you this record that

(Testimony of Donald Henshaw Cooper.)

you just handed me, Mr. Cooper. Will you state what it is, please?

A. That is the original duplicate of the stevedore payroll of the regular Matson stowage gang who loaded the stowage aboard the Hawaiian Shipper.

Q. Where did you get it?

A. I removed it from the company files.

Q. Is it a record kept in the usual course of business of the Matson Company?

A. That is correct.

Q. Where is it kept? In what department?

A. It is kept in—I got this from the stevedore pay office on 32, the timekeeping department.

Q. Who prepares that record?

A. It is prepared by the stevedore boss that comes from the Union Hall. This particular boss happened to be named Al Steffani.

Q. Are you consulted in its preparation?

A. Yes, I verify [1972] the time the men work.

Mr. Houck: I offer this exhibit or document in evidence, your Honor.

Mr. Faulkner: Your Honor, there is no foundation for this. May I ask the purpose?

Mr. Houck: Oh, yes. One of the points you made on cross-examination with respect to the Hawaiian Shipper was that these eggs may have been on the dock for six or seven days. Now I offer this with the witness's subsequent explanation of it to show that they could not have been there that long.

(Testimony of Donald Henshaw Cooper.)

Mr. Faulkner: Your Honor will recall that in the Jones case the matter of loading documents from the dock onto the ship was involved. The man who unloaded them came in. There is no foundation here, your Honor, for this.

Mr. Houck: This is the supervisor of the persons who loaded it. This is merely a time record to show when they loaded the ship.

Mr. Faulkner: You have not asked the witness when they loaded it, how long it took them, or anything else.

The Court: You may lay the foundation.

Mr. Houck: Q. Do you recall when you loaded that particular ship other than early in December, 1944?

A. I am sorry, I didn't understand.

Q. Do you recall the precise date on which you loaded that ship?

A. The record shows I loaded it from December 4th [1973] to December 7th, inclusive. I do remember working on the ship. The record verifies the dates.

Q. Do you recall the precise dates other than appears in that record? A. No.

Q. Do you recall how many days it took you to load that ship?

A. Four, five, six and seven—four days——

Q. I mean, do you have any independent recollection?

A. Frankly, no, on the number of days.

(Testimony of Donald Henshaw Cooper.)

Mr. Faulkner: Your Honor, he may use this to tell the days he loaded the ship.

Mr. Houck: He states he has no independent recollection.

Mr. Faulkner: That he has not?

Mr. Houck: Yes, and I will now offer that record in evidence.

Mr. Faulkner: Your Honor, we will object to the record, but I have no objection to him testifying to the fact, even if he uses it, but this record would not be admissible against us. However, in the interest of time, he can tell from it the days. I am willing to have him aid his recollection from it.

The Court: Tell the jury what that discloses.

A. This is the payroll record of the stevedores who worked the ship, and it is the only work that was performed on the ship in loading stores on that particular voyage on that pier.

Mr. Houck: Q. Will you state when you began loading stores [1974] on the Hawaiian Shipper?

A. I began loading stores on the 4th of December.

Q. And can you tell us, assuming that these eggs were delivered on the dock on the 5th of December, can you tell us from that record when they would have been loaded?

Mr. Faulkner: I object to that, your Honor.

Mr. Houck: Q. Can you tell us, aside from the record, when they would have been loaded?

Mr. Faulkner: I object to his refreshing his recollection of what somebody else did. In other

(Testimony of Donald Henshaw Cooper.)

words, I have no objection in the interest of time to him saying the ship was loaded between the 4th and the 7th of December.

The Court: He wants to fix the time.

Mr. Faulkner: But he can't fix the time, your Honor, from that document prepared by someone else, of when a particular stevedore took a case of eggs and put them in the hold.

The Court: Q. Whose is that?

A. It is prepared by the stevedore foreman, whose name is at the top of the sheet.

Q. Under your supervision, or otherwise?

A. I approve it. I am mainly interested in the hours worked at the time this record is made.

Q. Aside from that, your interest begins and ends there with relation to this document?

A. The hours worked and the freezer time worked, premium time, and so forth, involved.

Q. Who is this foreman?

A. His name is Steffani. [1975]

Q. Do you know whether or not he is available?

A. He is available.

The Court: Proceed, gentlemen.

Mr. Faulkner: May I see that?

The Witness: Certainly.

Mr. Houck: Q. Mr. Cooper, what is the practice you follow in loading stores on board a ship? What type of stores do you load first?

A. Stores that require freezing temperatures in order to be kept are loaded first; that is, 32 degrees or below. And when there are no freezer stores

(Testimony of Donald Henshaw Cooper.)

on the dock, then we load the stores that go into the chill room.

Q. Do freezer stores include eggs?

A. No.

Q. The eggs go in the chill room?

A. The eggs go in the chill room.

Q. When would the eggs be loaded with relation to the loading of these freezer stores?

A. After the freezer stores were aboard, or at any time when there happened to be no freezer stores on the dock.

Q. Do you recall whether you loaded, or whether you actually went on board this particular ship in the process of supervising this loading?

A. I always go aboard a ship to supervise the loading, because I am responsible for the condition inside the boxes as well as the material being on the pier.

Q. And did you on this occasion notice the condition of the chill box on board the Hawaiian Shipper? [1976]

A. I always inspect the condition of a chill box. I loaded many ships during the war. I do not remember this particular ship. But if it were unsatisfactory I certainly would have called it to the steward's attention.

Q. It is part of your job, then, to make sure of the condition of the chill box?

A. That is correct.

Q. On these days in December 1944, will you de-

(Testimony of Donald Henshaw Cooper.)

scribe Pier 32? Was it covered or was it open to the sun?

A. It is a covered pier.

Q. Is it open at both ends then?

A. It is closed on all four sides and a roof over it. There are doors that open on both sides. The end only has a small door on it.

Q. Can you give us some idea of the temperature of this pier early in December, 1944?

A. The temperature inside the pier is usually slightly cooler than outside. I would not know the actual temperature.

Q. It is cooler than outside the pier, is that correct?

A. Generally speaking, yes.

Q. I show you Government's Exhibit 138 for Identification again and ask you if you can tell me when the eggs were loaded on that particular ship?

Mr. Faulkner: We object to that, your Honor. In other words, that is not a record that was made by this witness or one that was made at his direction for the purpose of [1977] reflecting the place of storage of products. This is a document prepared by others reflecting the acts of others, and this witness has testified clearly to your Honor that he is interested in the time worked. Now, in the interest of time I have no objection to him using that to show the dates upon which a ship was being loaded, but to indicate what somebody else could testify to, I object to its use for that purpose be-

(Testimony of Donald Henshaw Cooper.)

cause it is not the type of document that a witness may use in a court of law to refresh his recollection from.

Mr. Houck: I submit, your Honor, there are entries on that document made in the usual course of the company's business which he can identify because he is familiar with them and from which he can give the answer to my question. Another person who would perhaps lay a better foundation for the document could not draw the inferences from those identifications.

The Court: Whoever prepared this document, if he is available, I would suggest to you that you bring him in here so there will be no question about it.

Mr. Houck: That is all.

Mr. Faulkner: That is all, your Honor.

GEORGE R. VAIO

called on behalf of the Government; sworn. [1978]

The Clerk: Will you state your name?

A. George Vaio.

The Court: Q. Where do you live?

A. 1731 - 21st Avenue.

Q. San Francisco? A. San Francisco.

Q. What is your business or occupation?

A. At the time in question I was the purchasing agent for Moore-McCormick.

Q. What are you doing at the present time?

A. I am in the paint distributing business.

(Testimony of George R. Vaio.)

Mr. Faulkner: Your Honor, in order that the record may be clear, your Honor will recall that the last witness testified to a matter dated December 4, 1944. It is understood under the ruling of the Court that is being offered solely as to the——

Mr. Pratt: The first count.

Direct Examination

Mr. Pratt: Q. Mr. Vaio, in May of 1944 I believe you were the purchasing agent, were you not, of the Moore-McCormick Lines; these lines at the time were operating for the Government the steamship Cape Cumberland, were they not?

A. Yes sir.

Q. I show you this paper, a purchase order, and ask you if you can identify it? A. Yes.

Q. That is an original purchase order or a duplicate original [1979] of the Moore-McCormick Lines which was issued by you, is it not?

A. That is right.

Q. And it has your signature at the bottom?

A. That is right.

Q. What are those initials? A. G. R.

Q. G. R. Vaio? A. Right.

Q. What did you do in connection with ordering these supplies from Nye & Nissen on this tenth day of May, 1944, for delivery to the Cape Cumberland, Oakland Outer Harbor, Berth 4? What did you do?

A. I turned this particular requisition over to

(Testimony of George R. Vaio.)

my steward buyer, Mr. Eymard, and he placed the order by telephone.

Q. He placed the order by telephone and this is a confirmation? A. Right.

Q. And this paper was issued, signed and sent by mail, was it, to Nye & Nissen?

A. That is right.

Mr. Pratt: I offer it in evidence.

Mr. Faulkner: Your Honor, from time to time these documents have been offered in evidence and I have made objections. Your Honor has overruled them and I have taken an exception. May those objections go to this document, your Honor, similar to those made before?

The Court: The objection will be overruled. It may be admitted and marked.

(The document was thereupon received in evidence and [1980] marked U. S. Exhibit 139.)

Mr. Faulkner: What ship was this supposed to be?

Mr. Pratt: This is the Cape Cumberland, and the testimony relates to one of the overt acts described in the first count of the indictment.

Mr. Faulkner: Does it relate to eggs and butter?

Mr. Pratt: The purchase order which is now in evidence as Exhibit 139 describes 700 pounds of butter, U. S. Grade A or 92 Score, one-pound prints, at forty-six and a quarter cents a pound, $333.00; Item No. 2 is 450 dozen eggs, U. S. Procurement, Shell Treated, Grade 1, Large, Minimum

(Testimony of George R. Vaio.)

net weight per 30 dozen, 45 pounds; 15 cases; and the third item is 100 pounds of cheese, American, Whole Wheat Daisy, 92 Score, 20 to 22 pounds, twenty-nine and a half cents a pound, $33.04; and the eggs 40 cents a dozen, $180.00; or a total of $546.04.

Q. I notice on this purchase order, Mr. Vaio, the first item is 700 pounds of butter, and then following it in pencil with a red line around it is the number "720."

A. The number 720 indicates the actual amount received by the checker.

Q. With cheese and butter the amount or quantity actually delivered may vary from the amount mentioned in the purchase order, is that true?

A. That is right.

Q. In this case 700 pounds was ordered of butter and 720 pounds [1981] delivered, and 100 pounds of cheese were ordered and 112 pounds delivered, is that right?

A. That is right.

Q. Did you have anything further to do with the matter after issuing the purchase order?

A. No.

Q. Who checked these products on the boat?

A. We have our own company checkers on the piers that do the receiving.

Q. And when the matter came back to you, if it did, in the form of invoices from Nee & Nissen, did you check those?

A. Well, they are checked by girls for the ex-

(Testimony of George R. Vaio.)

tension, and then they are passed to me for payment, all things being equal, then I endorse it for payment.

Q. Do you have anything to do with the actual payment, the issuing of the check in payment?

A. No.

Q. That is in another department, is it?

A. Right.

Q. Calling your attention again to the pencil figures 112 pounds opposite the 100 pounds of cheese, do you know how much cheese was actually delivered on that boat?

Mr. Faulkner: Just a minute, your Honor. In other words, the witness has testified in response to Mr. Pratt's questions that the purchase order called for 100 pounds of cheese and that the 112 pounds represented the cheese actually received. Now, when he gets that answer he wants to destroy it.

Mr. Pratt: I want to clarify the situation.

Mr. Faulkner: Oh no, you want to destroy it. [1982]

The Court: I can't tell what he wants to do, but I still allow him to answer the question.

Mr. Faulkner: He hasn't a right to cross-examine his own witness.

The Court: Proceed.

Mr. Faulkner: Exception.

Mr. Pratt: Will you read the question?

(Question read.)

A. All I am going by is that figure there. In

(Testimony of George R. Vaio.)

other words, if a checker signed for 112 pounds, I assume he received 112 pounds.

Mr. Pratt: Q. That is all you know about it?

A. That is right.

The Court: It is twelve o'clock. We will take a recess until two.

(Thereupon a recess was taken until 2:00 o'clock p.m.) [1983]

Afternoon Session, February 28, 1946, 2 p.m.

The Court: Waive the roll call, stipulating and agreeing the jurors are present.

Mr. Pratt: Call Mr. Vaio.

The Bailiff: Mr. Vaio is not present.

Mr. Pratt: If the Court please, this witness has not returned. It may please the Court, the witness undoubtedly be here in a moment. Meanwhile, I would like to offer in evidence Exhibit No. 2 for Identification, which is a general agency contract between the Government and Moore-McCormick Steamship Company, together with a letter of allocation of the steamship Cape Cumberland, indicating that that steamer was assigned to the Moore-McCormick Steamship Company for management.

Mr. Faulkner: We made objections to similar types of documents before, your Honor, and we renew the objection.

The Court: It will be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 2 for Identification was thereupon admitted in evidence.)

Mr. Pratt: The witness is not here, Mr. Vaio. We will call another witness if you do not mind.

Mr. Faulkner: No.

Mr. Pratt: This man is the boss of the stevedores loading the steamship Hawaiian Shipper, referred to by Mr. Cooper this [1984] morning.

LORENZ STEFANI, JR.,

called as a witness by the Government; sworn.

The Clerk: Will you state your name?

A. Lorenz Stefani, Jr.

Direct Examination

Mr. Houck: Q. Mr. Stefani, have you been employed in loading the Hawaiian Shipper in December, 1944? A. Yes.

Q. What were your duties in connection with that work?

A. Well, I load all the stores for the Matson Navigation Company.

Q. You have men under you? A. Yes.

Q. How many?

A. Sometimes we have sixteen and sometimes eighteen.

Q. Do you recall loading that particular ship?

A. Yes.

Q. Let me show you Government's Exhibit 198

(Testimony of Lorenz Stefani, Jr.)

for Identification. Do you recognize the handwriting on that?

A. Yes. That is my handwriting.

Q. That is your handwriting?

A. Yes, sir.

Q. I notice it is a record of the time of men. Can you tell us what men are set forth on that document? A. What do you mean, sir?

Q. Who are they?

A. Well, they are longshoremen.

Q. Are they the men who worked under you in loading the ship? [1985] A. Yes, sir.

Q. Is it a part of your duties to keep the time of the men under you?

A. Yes, that is my duty.

Q. How do you divide their time?

A. That goes into the office and we have straight time and overtime.

Mr. Walker: May I have the answer read, your Honor?

The Court: Read the answer.

(Answer read by the reporter.)

Mr. Houck: Q. Do you note any part of that time is spent in the freezer?

A. Yes; when we work in the freezer we put it down.

Q. Why do you make that notation?

A. We get 10 cents an hour more.

Q. What do you do then with that document when you finish making it out?

(Testimony of Lorenz Stefani, Jr.)

A. I turn it in to the man over me, or I turn it in to the company, the timekeeper.

Q. Who would be the man over you?

A. That would be Don Cooper.

Q. Don Cooper? A. Yes.

Mr. Houck: I offer that document in evidence, your Honor.

Mr. Faulkner: We object to that document as being incompetent, irrelevant and immaterial. In other words, the document made by this witness wouldn't be admissible against the defendants, but if he needed it to refresh his recollection——

The Court: Develop these facts, whatever they may be. What does this document disclose?

Mr. Houck: Q. Does that document disclose what stores [1986] were loaded on December 5, 1944, onto the Hawaiian Shipper?

A. That's mine. I made that up. It says the dry stores on the document—I started with dry stores, and when a freezer came in I stopped the dry stores to go on the freezer.

Q. What type of stores do you load first if they are available on the dock?

A. Freezer stores first.

Q. Freezer stores first? A. Yes.

Q. What do you load next?

A. Chill stores.

Q. Stores that go into the chill box?

A. Yes.

Q. Finally you load the dry goods?

A. Yes.

(Testimony of Lorenz Stefani, Jr.)

Q. Can you look at that paper and tell me what stores were loaded; what type of stores were loaded on December 5th?

A. Well, the dry stores first.

Mr. Faulkner: May I have that read?

The Court: Read the answer.

(Answer read.)

Mr. Houck: Q. On what do you base that?

A. Let me see—wait a minute. I think the first was dry stores. Then we had freezer.

Q. The first was dry stores, and then you had freezer? A. Yes.

Q. All the rest of the day?

A. Yes, until 6 o'clock.

Q. Then you had certain stores on the dock that would go into the chill box. Can you tell me from that document when you did load them?

A. That would be kind of hard to say.

Q. Can you give me any time limitation, any limitation at all? [1987]

A. No, I couldn't, because so much different stuff is here. You don't know what is on the dock.

Q. You know it was before the 7th, at any rate?

A. Yes.

Q. Where do you load eggs?

A. In the chill.

Q. They are loaded in the chill box?

A. Yes.

Mr. Houck: That is all.

(Testimony of Lorenz Stefani, Jr.)

Cross Examination

Mr. Faulkner: May I see that, please?

A. Yes.

Q. Mr. Stefani, as I understood you there were a group of men down there loading various stores on the Hawaiian Shipper? A. Yes.

Q. You were keeping the time of those men?

A. Yes. I am the gang boss. I keep the time of them.

Q. From that record you have testified that the men who were working for you were given overtime for working in the freezer.

A. Yes, they get 10 cents an hour more.

Q. They were loading in the freezer on December 7th, the last day of loading, weren't they?

A. For two hours.

Q. Well, I mean they were still loading in the freezer on the 7th of December?

A. Well, that could have been. Lots of things come in.

Q. The point is, the loading started on the 4th of December, did it not? A. No, the 5th.

Q. It continued——

A. No, that's right. That is the 4th, 4th, 5th, 6th and 7th. [1988]

Q. Did you load in the freezer on the 4th?

A. No.

Q. You did not. But you were loading something on the ship on the 4th? A. Yes.

Q. Then on the 4th you were loading into the freezer—I mean the 5th.

(Testimony of Lorenz Stefani, Jr.)

A. Yes, the 5th; 9 o'clock to 6.

Q. The last day, did you do any loading? That was the 7th. A. Yes.

Q. Again you were loading the freezer?

A. Yes, two hours.

Q. Would that mean that everybody worked loading in the freezer?

A. No. You have six men on the dock and eight men in the hold. It would be about six men, but the whole gang gets freezer time, dock men and hold men.

Q. On the 5th the freezer operation was between 12 o'clock noon or, rather—— A. 9 to 12.

Q. 9 to 12, and 1 to 6? A. Yes.

Q. Is that right? A. Yes.

Q. According to this record that you prepared, the loading in the freezer was 10 a.m. to 12 noon?

A. Yes.

Mr. Faulkner: That is all.

The Court: Step down.

Mr. Houck: Your Honor, at this time the Government renews its offer of this document. I think it is clearly admissible as a record of the steamship company which states specifically the time these stores were loaded on the ship. [1989]

Mr. Faulkner: The witness has testified—he has not testified that any stores involved in this case were loaded on this ship.

The Court: Since he testified, and he used this document to refresh his recollection, I will allow it to go into evidence.

Mr. Faulkner: Your Honor, may I point out that the rule of law is that where a witness has used a document to refresh his recollection it is not admissible to uphold his recollection nor his testimony, but is only admissible as part of the cross examination.

The Court: Since it has been testified to, let the document also be admitted for any purpose that either side may wish to use it.

Mr. Faulkner: Exception.

(The document previously marked U. S. Exhibit 138 for Identification was thereupon admitted in evidence.)

GEORGE VAIO,

recalled, having been previously sworn, testified as follows:

Mr. Pratt: This is Mr. Vaio, whose direct examination is completed. He is here for cross examination.

The Court: You will have to explain to the jury your absence here. They were waiting for you.

The Witness: I was delayed in traffic, your Honor. [1990]

The Court: Well, traffic is anything but what it should be. Proceed.

Cross Examination

Mr. Faulkner: Q. Mr. Vaio, as I understood your direct examination you were the purchasing

(Testimony of George Vaio.)

agent for the Moore-McCormick Lines, Inc., in the month of May, 1944? A. That's right.

Q. Had you been the purchasing agent for that company prior to that time?

A. There was a change there just about that period where I was in there. I was assistant prior to that time.

Q. I mean in your duties as assistant, before you became the purchasing agent, you were working for the Moore-McCormick Lines?

A. That's right.

Q. Was it a frequent practice of yours to issue purchase orders to the firm of Nye & Nissen?

A. That's right.

Q. How long had your company been dealing with them in so far as May, 1944, was concerned? How long prior to that?

A. I don't know offhand, but it was, I would say offhand at least a year prior to that.

Q. Do you remember anything of the quantities of merchandise that purchase orders were issued for? A. No; I wouldn't know those figures.

Q. Was it frequent? A. Yes.

Q. The amounts of quantities were substantial?

A. I would say yes.

Q. Was there ever any objection to merchandise received by [1991] your company from Nye & Nissen? A. Not to my knowledge.

Q. In May, 1944, I understand that this document was issued by you and signed by you, isn't that right, U. S. Exhibit 139?

(Testimony of George Vaio.)

A. Yes, that's right.

Q. That called for the delivery of certain butter, eggs and cheese? A. That's right.

Q. Later, I understand that documents were submitted to you indicating a delivery of that merchandise to the Cape Cumberland?

A. That's right.

Q. In connection with any of the merchandise covered by the purchase order was there ever any objection to the merchandise brought to your attention? A. Not to my knowledge, no.

Q. I notice on this document that it says on its face that it is to be inspected by the Dairy and Poultry Branch of the Food Distribution Department, Department of Agriculture; did you receive a certificate of inspection accompanying——

A. That was received by the steward's department of our organization. I assume they received the same document.

Mr. Faulkner: Have you a counterpart of the certificate of inspection, Mr. Pratt?

Mr. Pratt: The Government produces a paper asked for by Mr. Faulkner. I think it is the original signed certificate.

Mr. Faulkner: Q. Do you know, Mr. Vaio, what this certificate was? Wasn't that part of your files?

A. No, not of mine. It became part of the files of the steward's department. [1992]

Q. Of your line?

A. Yes, the Moore-McCormick Lines.

(Testimony of George Vajo.)

Mr. Faulkner: I ask that it be marked for identification.

The Court: Admitted and marked for identification.

(The document was marked Defendants' Exhibit AN for Identification.)

Mr. Faulkner: Q. You are more familiar with this document, 1939, than I am, but there is a blue stamp there. Can you tell me what that says?

A. "To be inspected by——".

Q. In other words, I can read the word "received" but I cannot read the other. I thought if you were familiar with it you might help us all by telling us what it says.

A. The time stamp, you have reference to?

Q. Yes.

A. That is "Despommier," our auditor, and he could tell you more about that than I could. That was his department.

Q. Can you tell what time the accounting department received that for payment?

A. That is so blurred. It is mixed right in with the imprint, here, it is hard to say, but that would indicate the document was received, the time of receipt. They use a stamp as to when they receive it for payment. He could verify that, Mr. Despommier.

Mr. Faulkner: I think that is all.

Mr. Pratt: That is all.

Mr. Faulkner: Just one question, please.

Q. This purchase order is an order of the Moore-

(Testimony of George Vaio.)

McCormick [1993] Line to the firm of Nye & Nissen, is it not? A. No—as agents.

Q. As an agent.

A. We are agents for the War Shipping Administration in this particular case.

Q. Were you acting for the Government Purchasing Commission of the Soviet Union?

A. No.

Mr. Faulkner: Why laugh? That is what it says.

The Witness: We also had lend-lease shipments. We had our purchase orders so made up. If you note, that is x'd out.

Q. I want to know who you were acting for.

A. We were acting for the War Shipping Administration. It says here, "United States of America, War Shipping Administration, General Agents. Eight copies of invoice and two receipts." This is joint. In other words, acting also as lend-lease we had to have that on our purchase orders.

Q. The figures that I want pointed out——

A. In that box.

Q. In a box near the words "United States of America War Shipping Administration," that indicates it was a War Shipping Administration contract that you were acting under? A. Right.

Q. While if those figures were moved down it would mean you were acting——

A. On lend-lease.

Q. For lend-lease. I notice the signature here

(Testimony of George Vaio.)

of a man in the left-hand corner. Who is that man? It appears like an original signature.

A. This man, here, is the steward on the [1994] ship. That indicates receipt by the ship, the steward.

Q. What was the certificate that he signs, the purchase order?

A. In other words, all purchase orders to the steward's department are signed by the chief steward in this category. If it is the deck department, the deck officer signs it. If the engine department, the engine officer signs it; to merely indicate receipt by the chief steward.

Mr. Faulkner: That is all; thank you.

ROLAND M. DESPOMMIER,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name?

A. Roland M. Despommier.

Direct Examination

Mr. Pratt: Q. Mr. Despommier, where do you reside? Here in San Francisco, do you not?

A. No; in San Lorenzo.

Q. Well, that is in the vicinity of San Francisco? A. Yes.

Q. Your occupation is what?

A. Pacific Coast Auditor.

Q. With what company?

(Testimony of Roland M. Despommier.)

A. Moore-McCormick Lines, Inc.

Q. The Moore-McCormick Lines operated under a general agency contract from the Government, the operations of the steamship Cape Cumberland?

A. Yes.

Q. Did they? A. Yes.

Q. In your official capacity as Pacific Coast Auditor, do you have under your jurisdiction the records and files of your [1995] corporation relating to the operations of the Cape Cumberland?

A. Yes.

Q. I hand you a paper entitled, "Invoice, Nye & Nissen, Inc.", addressed to "United States of America, War Shipping Administration, Moore-McCormick Steamship Company, General Agents, Date May 10, 1944," covering certain eggs, butter and cheese, in the amount of $564.04, delivered to the steamship Cape Cumberland, berth 6, Outer Harbor, Oakland. Does that paper come from the original records of your company kept in the regular and ordinary course of business?

A. Yes, sir.

Q. Do you know when that paper came to your office?

A. It was received at nine o'clock, May 17, 1944.

Q. You tell that from the receipt stamp?

A. Yes.

Q. Rubber stamp? A. Yes.

Mr. Pratt: This is offered in evidence.

The Court: Admitted and marked.

(Testimony of Roland M. Despommier.)

Mr. Faulkner: Subject to our same objection to other invoices.

The Court: Overruled.

(The document was marked U. S. Exhibit 140 in evidence.)

Mr. Faulkner: That is offered on the substantive count and on count 1?

Mr. Pratt: No, only on count 1. That relates to one of the overt acts alleged in the indictment.

I would like to read further from this exhibit to the jury a stamp in the lower right-hand corner:

"I certify that the above bill is correct and just; that payment therefor has not been made; that all statutory requirements as to American production and labor standards and all conditions of purchase applicable to the transaction have been complied with and that State or local sales taxes are not included in the amount billed."

Then the name of the firm, and then in pen, "Nye & Nissen, Inc." Signature in ink, and then in pen, "Irma Robles. Title of signer, Bookkeeper."

I now hand you another paper, a cancelled check, dated June 13, 1944, "San Francisco, Moore-McCormick Lines, Inc., Pacific Republic Lines Account, $815.03. Pay to the Order of Nye & Nissen, Inc., 1301 Seventeenth Street, San Francisco, California," and with the signature, "Amy C. Kensley, Manager, Traffic Department, R. M. Despommier, General Freight Agent and Auditor." That is an original check from the files of your company, is it not? A. It is.

(Testimony of Roland M. Despommier.)

Q. And that is your signature at the bottom, isn't it? A. Yes.

Q. This check, I take it, was issued on the date it bears, June 13, 1944? A. Right.

Q. Can you tell whether that was in payment of the invoice, Exhibit 140?

A. If the check bears the same number as the number appearing on the invoice.

Q. What is the number appearing on the invoice or the check? A. 12750. [1996]

Q. That is the number on the check that you identified, is it not? A. Yes.

Q. I notice the amount of the check is for considerably more than the amount of the invoice. How is that explained?

A. Well, it is our practice to eliminate the unnecessary use of checks by accumulating invoices on the same check and paying them by the same check.

Q. I hand you another paper which also comes from your files, does it not? A. Yes.

Q. What do you call that paper?

A. We call this an accounting code sheet.

Q. Does that paper show that the check for the larger amount also paid the smaller amount of the invoice? A. It does.

Mr. Pratt: I offer these in evidence.

The Court: Admitted and marked.

Mr. Faulkner: Subject to our general objection. Exception.

(The check was marked U. S. Exhibit 141

(Testimony of Roland M. Despommier.)

in evidence, and the accounting code sheet was marked U. S. Exhibit 142 in evidence.)

Mr. Pratt: I now show you another paper and ask you if this also comes from the regular records of your company? A. It does.

Q. What is that?

A. This is what we call a delivery receipt.

Q. What do you mean by that?

A. Well, it is a document [1997] usually furnished by the firms when they make delivery of merchandise for which they obtain a signature on delivery.

Q. At the steamer, at the ship?

A. Wherever the designated place of delivery is on the purchase order.

Q. The place of delivery mention on the purchase order which I am now showing you, which is Exhibit 139, where is the place of delivery?

A. It shows Oakland Outer Harbor, Berth 4.

Q. The paper you now have in your hand, does that show where this merchandise was in fact delivered?

A. It shows Oakland Outer Harbor, Berth 6.

Mr. Pratt: This delivery receipt is offered in evidence. [1997-a]

Mr. Faulkner: Same general objection—I mean the objection made to the similar documents on other occasions, your Honor.

The Court: The objection will be overruled. It may be admitted and marked.

(Testimony of Roland M. Despommier.)

Mr. Faulkner: Exception.

(The document was thereupon received in evidence and marked U. S. Exhibit 143.)

Mr. Pratt: Q. I call your attention again to the check for $815.03, Exhibit 141. Out of what funds was that check paid?

A. These are paid out of Government funds, transferred from our New York office to the San Francisco Bank.

Q. Those were the funds supplied by the War Shipping Administration? A. Yes.

Mr. Pratt: Cross examine.

Cross Examination

Mr. Faulkner: Q. Mr. Despommier—is that correct? A. Yes.

Q. On this Exhibit 140 there is a time receipt there. That is a part of the records of your company as distinguished from the invoice as it came into your office, is it not? A. That is right.

Q. Then in addition to that there is a circular stamp that says, "Verified", right where your thumb is? A. That is right. [1998]

Q. That is your record, is it not?

A. That is right.

Q. And under that there is another stamp about commissions; that is your record, is it not?

A. No, it is not.

Q. Is it yours?

A. That is placed on by the vendor.

Q. By the vendor? A. That is right.

(Testimony of Roland M. Despommier.)

Q. In other words, your office does not——

A. No.

Q. Then that invoice became part of another record of your department resulting in an ultimate payment of this invoice No. 140 by this check, is that right? A. That is right.

Q. Now, do you know whether in connection with the relations of the Moore-McCormick Lines and the United States Government whether or not the Moore-McCormick Lines presents a claim to the War Shipping Administration or some other agency for funds to cover the amounts of money advanced from time to time or paid from time to time in relation to the victualling and the preparing of ships for voyages?

A. Well, the usual procedure is for the War Shipping Administration to advance funds to the agent.

Q. Yes?

A. From which to make necessary disbursements of the ship accounts. Then they make an accounting of the funds expended and return any unused funds.

Q. So that somewhere in the relationship between your company and the United States Government your company prepares an accounting to the War Shipping Administration in which it seeks a credit for moneys that have been expended from time to time, is that right?

A. That is right.

Q. And then if there is an overage of moneys

(Testimony of Roland M. Despommier.)

in your possession, you account for that to the War Shipping Administration?

A. That is right.

Q. In the inception of this account how did you start first? With your moneys or the moneys of the Government?

A. We started on the Government funds.

Q. In other words, before any operation was entered into by the Moore-McCormick Lines in relation to any Government vessel, is it my understanding that no debts were contracted or moneys expended until you had in hand funds of the United States Government? A. That is right.

Q. How do you know that?

A. How do I know it?

Q. Yes.

A. The accounting department makes a request for funds from our New York office immediately when a vessel begins to incur indebtedness.

Q. The New York office is an office of the Moore-McCormick Lines, is it not?

A. That is right. That is our headquarters.

Q. Your office in San Francisco gets money from the New York office? A. That is right.

Q. Now, the records of how moneys are received by your company from the United States Government are kept in New York, are they not? [2000]

A. The original records are kept in New York. They are the ones that are eventually turned over to the War Shipping Administration with the com-

(Testimony of Roland M. Desponnier.)

pleted account. However, we keep copies in our office, and our New York office keeps copies.

Mr. Faulkner: That is all.

The Court: Step down.

GABRIEL GARFIAS,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Gabriel Garfias.

Direct Examination

Mr. Houck: Q. Mr. Garfias, were you employed by Moore-McCormick Lines in May of 1944?

A. Yes sir.

Q. What was your position with that company?

A. I was receiving clerk receiving stores.

Q. I beg your pardon?

A. Receiving clerk receiving stores for them.

Q. What are your duties in such position?

A. Just receiving clerk.

Q. And as receiving clerk what do you do?

A. Receive the goods that come up there for the ship.

Q. Do you recall where you were working on May 10, 1944? A. Pier 4 in Oakland. [2001]

Q. Do you know whether that is the Outer Harbor or not in Oakland?

A. The Outer Harbor.

Q. I show you Government's Exhibit 143 in

(Testimony of Gabriel Garfias.)

evidence, which is a receiving ticket showing the receipt of certain stores. I will ask you to look at the lower right-hand corner. Do you notice the signature there? A. That is right.

Q. Whose signature is that?

A. That is mine.

Q. Do you recall the circumstances under which you placed that signature on that document?

A. Yes sir.

Q. What were they?

A. There were some cases of eggs, butter and cheese.

Q. Where did they come from?

A. They came from Nye & Nissen.

Q. When did you first observe them?

A. When they came in on the truck, was delivered by the drayman.

Q. What did you do in connection with that delivery?

A. In which respect? What do you mean?

Q. How did you get that document, for instance?

A. When the drayman came up there with the goods, they send these documents to me, and then after they place them on the pier, I sign for them.

Q. You mean you placed your signature on that document? A. That is right.

Q. Did he have a duplicate of that document which he took away with him, or is that the only copy that he showed you?

A. Yes, he had two. [2002]

Q. Did you sign both of them?

(Testimony of Gabriel Garfias.)

A. I do not recall that.

Q. Well, at any rate, you signed this one. As receiving clerk, what are your duties in connection with checking the merchandise that comes in?

A. To see that the goods were received on the pier and sign for them.

Q. What check did you make in connection with that merchandise?

A. Well, count the number of packages—in other words, 15 cases of eggs or 12 cases of butter and 4 cases of cheese.

Q. You checked the merchandise to see that it corresponded with that document, is that correct?

A. That is right.

Q. Did you open any of the boxes or packages?

A. No sir, I did not.

Q. Did you inspect the quality of the goods in any way?

A. No sir. That wasn't my duty to do it.

Q. Did you weigh any of the packages?

A. No sir, I did not.

Q. So all you did was to check to see that the number corresponded, is that correct?

A. That is right.

Q. You say this merchandise was unloaded at Pier 4 in Oakland? A. Four, that is right.

Q. Will you describe that pier for us? What is it like? Is it covered?

A. It is a covered shed.

Q. What are the conditions of it. Is it damp?

A. No, it was pretty dry there, and it might

(Testimony of Gabriel Garfias.)

have been a little warm outside, but the goods was inside the pier there [2003] and it was well protected.

Q. Do I understand it was cooler inside the pier than it was outside? A. That is right.

Q. Did you see any of this merchandise go on board the ship?

A. Yes, I observed that some of the butter was loaded.

Q. On board the ship? A. That is right.

Q. Can you estimate how long that was after the merchandise was delivered to the pier?

A. Well, I should think between four and five hours.

Mr. Houck: That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Garfias, did I understand you were the receiving clerk for Moore-McCormick Lines? A. Yes.

Q. And they were your employer, were they?

A. That is right.

Q. The transaction represented by that paper you have there that bears your signature was one in the regular course of your business?

A. Yes sir.

Q. Did you receive and sign for all the merchandise that went aboard that vessel?

A. All the merchandise, do you mean, or this particular merchandise?

Q. No, all merchandise that went on the Cape Cumberland?

(Testimony of Gabriel Garfias.)

A. No sir, there was another clerk besides myself. [2004]

Q. You described the condition of a pier, Mr. Garfias. I think you said it was cooler inside than outside, is that right? A. That is right.

Q. On a very cold day where would the warmest place be? In the pier or outside?

A. The warmest would be outside, of course.

Q. You mean on a cold day? Is the pier always colder on the outside?

A. Well, yes, because the doors are open and there is enough circulation of air.

Q. The doors are open?

A. The doors are open, I said.

Q. They are open, are they?

A. In a good many cases they are, yes.

Q. How large a pier is it?

A. A pretty large shed. I would say about two or three hundred feet long.

Q. How many men would you say would be working upon that pier while the war was on in May 1944? A. I wouldn't know.

Q. Five hundred?

A. I couldn't tell you that.

Q. Was there a large amount of men in and out of that pier?

A. Well, in a good many cases there was two or three different ships working there, but I wasn't employed there at all times. I was only there for that particular ship.

Q. What I mean, Mr. Garfias, is this: In other

(Testimony of Gabriel Garfias.)

words, Pier No. 4 in Oakland Outer Harbor, when ships are being loaded, is a very busy place, isn't it?

A. Yes, it was. [2065]

Q. And there were a lot of men working there?

A. That is right.

Q. And those men consisted of men employed by the steamship companies?

A. Yes, and also by the Army.

Q. By the Army and by the stevedore companies? A. That is right.

Q. Can you give us any idea of the normal number of men who would be down on that pier working on the pier on a normal day where two or three ships were being loaded?

A. Well, I would say about two hundred men, two hundred and fifty.

Q. On the occasion of the receipt of these goods—you have a counterpart; I have a photostatic copy here—you have received certain packages from the firm of Nye & Nissen?

A. That is right.

Q. It was your privilege, if you desired to do it, to open those packages, was it not?

A. No, that was up to the port steward.

Q. The port steward.

A. The port steward.

Q. Was he present when the goods were delivered? A. I don't recall that.

Q. Well, at any time on the pier the company that you worked for had men there available to

(Testimony of Gabriel Garfias.)

open, if they wished, any package received to go aboard that vessel, isn't that correct?

A. That is right. [2006]

Q. On this occasion were you present at any time when anybody opened any of those packages?

A. I didn't understand your question.

Q. On the tenth of May—I think that is the date that you wrote down—— A. That is right.

Q. On that day were you present when anybody opened any of those packages? A. No sir.

Q. Were the packages under your observation the entire time? A. No sir.

Q. In other words, goods were delivered on the pier at a certain time on the tenth of May and you signed that paper you have in your hand?

A. That is right.

Q. And then some time later your recollection is you saw some butter being loaded on the ship?

A. That is right.

Q. Am I correct in that?

A. That is right.

Q. Did you at any time see anyone weigh any of the merchandise? A. No sir.

Q. Open any of the boxes? A. No sir.

Q. Or make any tests in relation to it?

A. No sir.

Q. And you did not keep the merchandise under your eye all the time, did you?

A. Well, no, because I had other things to do in connection with that.

Mr. Faulkner: That is all. Thank you.

Mr. Houck: That is all. [2007]

CAPTAIN HENRIK E. SIEVERS

called on behalf of the Government; sworn

The Clerk: Q. Will you state your name, please? A. Henrik Sievers.

Q. You spell your first name H-e-n-r-i-k, do you not? A. That is right.

Q. Henrik E. Sievers, S-i-e-v-e-r-s?

A. Yes, sir.

Q. Captain Sievers, where do you live?

A. In Santa Cruz, California.

Q. And your business is here in San Francisco, is it not? A. Yes sir.

Q. What is your business?

A. I am a California District Representative for the Alaska Transportation Company.

Q. And the Alaska Transportation Company is a shipping company, is it not?

A. Yes sir.

Q. Do you know of the relation of that company to the War Shipping Administration?

A. Yes sir.

Q. Do you know of the general agency contract whereby the Alaska Transportation Company manages the steamship Gilbert Hitchcock and also the steamship James Oliver? A. Yes sir.

Q. Where is the home office of the Alaska Transportation Company?

A. Seattle, Washington.

Q. And you are its local representative in San Francisco, is that right?

A. In California. [2008]

Q. For the State of California?

(Testimony of Captain Henrik E. Sievers.)

A. That is right.

Q. Now, I show you a paper. I will ask you if you can identify that paper, Captain?

A. Yes, that is a purchase order made out for the stores on the Gilbert Hitchcock.

Q. And that was issued by one of the officers of your company, was it?

A. It was issued by our agents in San Francisco.

Q. And your agents in San Francisco are who?

A. Olympic Steamship Company.

Mr. Faulkner: What company?

Mr. Pratt: Olympic Steamship Company.

Q. And what are your relations to the Olympic Steamship Company, your particular functions as the California representative of the Alaska Transportation Company?

A. My job is to see that our agents do their job.

Q. In the management of the Gilbert Hitchcock and the James Oliver, the two steamships, what, if anything, did the Olympic Steamship Company have to do with that work?

A. They completely husbanded the ship while she was in here with stores.

Q. Under your supervision?

A. Under my supervision, yes, sir.

Q. Are you personally familiar with this steamship, the Gilbert Hitchcock? A. Yes sir.

Q. And are you personally familiar also with the steamship [2009] James Oliver?

A. Yes sir.

(Testimony of Captain Henrik E. Sievers.)

Q. Now, after purchase orders are issued such as these which you identified, these being issued to Nye & Nissen, both of them, what, if anything, do you have to do with the supervision of the transactions relating to the delivery of these food products to the boats?

A. It is my job to see that when the vessel leaves for sea she is in all manner seaworthy, fully stored, fully manned, and ready for whatever length voyage she is to make.

Q. After the products are delivered to your boat is an invoice then received from the concern that furnishes the supplies? A. That is right.

Q. I direct your attention now to this paper. I will ask you if you can identify it?

A. Yes, that is a typical invoice received for stores purchased. This was in the Gilbert Hitchcock.

Q. And does it is paper come from the original records of the corporation kept in the ordinary course of business? A. Yes sir.

Q. What, if anything, did you have to do with this particular invoice?

A. That invoice was received in the San Francisco office under my supervision and was sent up to the home office for payment.

Q. To the home office where?

A. In Seattle.

Q. Did it first receive your okeh?

A. I look them over [2010] before they go up?

Q. You check, do you? A. Yes sir.

(Testimony of Captain Henrik E. Sievers.)

Mr. Pratt: This paper is offered in evidence, being an invoice of Nye & Nissen to the United States War Shipping Administration, Alaska Transportation Company, General Agents, covering 25 boxes of butter, 55 cases of eggs, Medium, Processed, AA, and other items of cheese, in an aggregate amount of $1,478.42. I offer it in evidence.

Mr. Faulkner: Your Honor, I would like to look at it. Your Honor has ruled this type out and permitted a counterpart, because there is so much writing that is not part of the record of Nye & Nissen. I would like to look at it, and I may not have any objection on that point. May I ask the witness a question?

Mr. Pratt: Yes.

Mr. Faulkner: Q. Captain, this paper, which is part of your file, when it came into your office or, rather, when it was received from the firm of Nye & Nissen—there is certain typewriting on there and there is a certificate signed by Trini Robley, a bookkeeper for Nye & Nissen, and then there is another rubber stamp about commissions, put on there in that fashion. Now, when the document came from Nye & Nissen, all that it had on was the two rubber stamps and the typewriting, isn't that right?

A. Yes sir. These other stamps were put on by our office. This stamp, there the skipper signed. [2011]

(Testimony of Captain Henrik E. Sievers.)

Q. There is a certificate here signed by a man named Helmer. A. That is a woman.

Q. Excuse me. She was the purchasing agent?

A. Yes. That was signed in Seattle before that was passed to the accounting department for payment.

Q. Someone up there signed it, is that right?

A. Right. The signature on the bottom was signed by the captain of the ship before he sailed.

Q. In other words, the captain signed the certificate of the delivery of the goods on the ship in good condition, is that right? And that was done before it was passed up to Seattle by you?

A. That was probably done just at sailing time, before he left.

Mr. Faulkner: Except the general objection, we haven't any objection because of the form of that particular paper, your Honor.

The Court: Let it be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 144.)

Mr. Faulkner: Exception to admitting it, your Honor.

Mr. Pratt: Q. I notice on this invoice also in pencil the signature E. A. Fischer, 5/1/44. Do you know what that is or who that is?

A. It looks to me as if it were the—I couldn't tell whose it is. It looks to me as if it was the receiving clerk on the [2012] dock or someone—either that or someone who is a member of the Nye & Nissen firm.

(Testimony of Captain Henrik E. Sievers.)

Mr. Pratt: This Exhibit 144 is another invoice from Nye & Nissen to the United States War Shipping Administration, Alaska Transportation Company, General Agents, describing a lot of food products, including 55 cases of eggs and 25 boxes of butter, the eggs being 41 cents a dozen, the butter 46¼ cents a pound; May 1, 1944; the amount of the bill is $1,478.42. It has a certificate at the bottom like others I have read to the Jury, signed by Nye & Nissen by Trini Robley, bookkeeper.

Q. Captain, I now hand you a cancelled check of the Alaska Transportation Company, General Agents, Special Account, dated Seattle, Washington, May 12, 1944, for $1,478.42, payable to Nye & Nissen, San Francisco, and endorsed by Nye & Nissen, and showing the cancellation perforation. Does that come from the regular record of your company? A. Yes sir.

Q. Is that the check by which this invoice, Exhibit 144, was paid by your company?

A. Yes sir.

Q. Do you know what funds were utilized for the payment of that bill as indicated by the check?

A. Yes sir.

Q. What funds?

A. Those came out of the General Agents Special Account.

Q. Funds furnished by whom?

A. By the United States Government. [2013]

Mr. Pratt: The check is offered in evidence.

Mr. Faulkner: Before your Honor rules, I

(Testimony of Captain Henrik E. Sievers.)

should like to ask this question:

Q. Did I understand you to testify that these funds came from the United States Government because that appears on the face of the check? Where does it appear on the face of the check where the funds came from?

A. That account is a Government account. That is money advanced us by the Government to husband these ships.

Q. In other words, it is because of your knowledge of this account, not the fact that the Government's name appears on it, is that right?

A. That is the account that the money came from.

Q. Do you deposit money in that account?

A. The Government does. It reimburses us.

Q. Does it pass through your hands?

A. No sir.

Q. Where are the moneys deposited?

A. Seattle.

Q. Have you ever seen any Government checks go into the account?

A. No sir, that come through the accounting department.

Q. Have you ever seen a ledger account?

A. Yes sir.

Q. Where?

A. In our auditor's office in Seattle.

Mr. Faulkner: I will just make the general objection, your Honor.

The Court: Let it be admitted and marked.

(Testimony of Captain Henrik E. Sievers.)

(The document was thereupon received in evidence and marked U. S. Exhibit 145.)

Mr. Pratt: I would like the record to show at this time, if the Court please, that this transaction relating to food products furnished to the Gilbert Hitchcock relates to the fifth count of the indictment.

The Court: Let the record so show.

Mr. Faulkner: And it is offered on that count.

Mr. Pratt: Offered on that count, and it is also offered in connection with the first count of the indictment, namely, the conspiracy count, as an overt act in support of the conspiracy.

Mr. Faulkner: When I have said from time to time, your Honor, the same objection, I think I clearly identified it to your Honor. We discussed it fully both in the presence of the Jury and out, about the admissibility of these documents against the various defendants, none of whose names have ever been mentioned in connection with any of these transactions.

Mr. Pratt: Well——

Mr. Faulkner: I mean that is the objection I have to all these documents. When I have said general objection your Honor recognized when we were talking about eggs on the William Clark that it was the objection that was fully developed in relation to attempting to prove a thing by its subsequent condition that I was talking about. Now when I say [2015] general objection I would like to identify clearly in the Court's mind the resistance